

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of RAY L. FINK and U.S. POSTAL SERVICE,
POST OFFICE, Spokane, WA

*Docket No. 00-1583; Submitted on the Record;
Issued November 6, 2001*

DECISION and ORDER

Before WILLIE T.C. THOMAS, BRADLEY T. KNOTT,
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation met its burden of proof in terminating appellant's compensation benefits.

The Board has duly reviewed the case record in this appeal and finds that the Office did not meet its burden of proof in terminating appellant's compensation benefits.

It is well established that once the Office accepts a claim, it has the burden of justifying termination or modification of compensation. After it has been determined that an employee has disability causally related to his employment, the Office may not terminate compensation without establishing that the disability had ceased or that it is no longer related to the employment.¹

On June 28, 1996 appellant, then a 48-year-old custodian, sustained low back and left knee strains in the performance of duty while moving furniture. He returned to work on October 18, 1996 in a limited duty capacity.

By letter dated November 6, 1998, the Office advised appellant that it intended to terminate his compensation on the grounds that the weight of the medical evidence established that he had no residual disability or medical condition causally related to his June 28, 1996 employment injury.

By decision dated December 23, 1998, the Office terminated appellant's compensation effective that date on the grounds that he had no disability or medical condition causally related to his June 28, 1996 employment injury.

By letter dated January 1, 1999, appellant requested an oral hearing that was held on October 26, 1999.

¹ See *Alfonso G. Montoya*, 44 ECAB 193, 198 (1992); *Gail D. Painton*, 41 ECAB 492, 498 (1990).

By decision dated January 18, 2000 decision, the Office hearing representative affirmed the Office's December 23, 1998 decision.

In a report dated May 21, 1997, Dr. John H. Hurley, appellant's attending orthopedic specialist, stated that appellant reported constant low back and left knee pain and occasional right knee pain. He provided findings on examination and noted that a September 3, 1996 magnetic resonance imaging (MRI) scan indicated a disc herniation at L5-S1.²

In notes dated July 16, 1997, Dr. Hurley stated that a July 15, 1997 MRI indicated a mild central posterior disc herniation at L5-S1.

In a report dated October 15, 1997, Dr. Hurley provided findings on examination and diagnosed a herniated disc. He indicated that appellant could perform limited duty.

In a report dated January 12, 1998, Dr. William R. Osebold, an associate of Dr. Hurley who treated appellant after Dr. Hurley retired, provided findings on examination and noted that a July 15, 1997 MRI revealed a small central midline disc herniation at L5-S1. He indicated that appellant was working in a limited-duty capacity.

In a report dated January 13, 1998, Dr. Warren J. Adams, a Board-certified orthopedic surgeon and Office referral physician, provided findings on examination and stated that appellant's current diagnosis was low back pain, by history. He stated:

“[Appellant] has either a sacralization or a lumbarization of a vertebra, which is an incidental finding and not symptomatic the diffuse non-localizing low back pain that [appellant] notes as his subjective complaint, on a more probable than not basis, is not related to a mild central posterior disc herniation at L5-S1. It should be noted that 30 [percent] of individuals have herniated lumbar discs who previously had no low back symptoms or any previous low back injury. Therefore, on a more probable than not basis, the herniated disc at L5-S1 is an incidental finding and not related to the [June 28, 1996 employment injury]. The past medical records do indicate a left knee condition, however, on examination and by history [appellant has] no current significant left knee symptoms that are based upon objective findings.”

* * *

“There is no objective evidence that [appellant] currently suffers from residuals of a mild central posterior disc herniation at L5-S1. There are no objective findings to account for his continued rectangular lumbar area pain complaint without focal pain.”

* * *

² The September 3, 1996 MRI report of the lumbar spine indicated a central posterior disc protrusion at L5-S1 causing a mild thecal sac effacement but no significant spinal stenosis.

“On a more probable than not basis, [appellant’s] left foot symptoms, which by history have now resolved, are not related to the [June 28, 1996 employment injury].”

* * *

“There are no objective findings due to the [June 28, 1996 employment injury] that would preclude [appellant] from his regular duties.”

However, Dr. Adams did not indicate that appellant’s lumbar pain had resolved and did not provide sufficient explanation for his opinion that the low back pain was not causally related to the disc herniation at L5-S1. He did not provide sufficient explanation for his opinion that appellant’s herniated disc at L5-S1 was not causally related to the June 28, 1996 employment injury. Furthermore, although he stated that appellant’s left foot symptoms had resolved, the record contains a February 6, 1998 MRI report indicating that appellant had small joint effusion of the left knee, as well as a bone bruise or edema involving the posteromedial tibial plateau.³

In a report dated August 14, 1998, Dr. Osebold stated:

“It is my feeling that the sprain of the lumbosacral ligaments and strain of the lumbosacral musculature and sprain of the right sacroiliac joint, more probably than not, are related to the [June 28, 1996 employment injury]....

“However, I find it impossible to note what the relationship of the small L5-S1 disc herniation is to that particular injury, or as to when it might have appeared, etc. If that disc were associated with definite nerve root impingement and sciatic signs and symptoms, and correlated with nerve root compression on MRI scans, I think it would be fairly easy to establish that as a real connection and relationship. However, it is simply impossible for me to state the relationship of the small central disc herniation without nerve root compression to the injury, and I would not begin to be able to speculate as to when that was sustained.”

However, this report is inconclusive as to whether residuals of the accepted back and left knee injuries have ceased. Furthermore, Dr. Osebold stated that he could not determine whether appellant’s herniated disc was causally related to his June 28, 1996 employment injury but he did not negate a possible relationship.

In this case, the medical evidence of record is not sufficiently detailed and rationalized as to why appellant’s accepted conditions have ceased and why his herniated disc and pain residuals, as well as his left knee condition, are incidental findings and not related to the June 28, 1996 employment injury. Therefore, the Office has not met its burden of proof in terminating appellant’s compensation.

³ The record shows that on June 8, 1999, appellant underwent left knee surgery.

The January 18, 2000 decision of the Office of Workers' Compensation Programs is reversed.

Dated, Washington, DC
November 6, 2001

Willie T.C. Thomas
Member

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member